

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

**Fran Frascati
aka Fran B. Frascati
aka Fran K. Frascati**

Chapter: 13

CASE No: 8-19-71525-las

Debtor.

OPPOSITION TO DEBTOR'S MOTION SEEKING LOSS MITIGATION

I, Aleksandra K. Fugate, Esq., attorney for Wells Fargo Bank, N.A. ("Secured Creditor"), affirms under penalty of perjury as follows:

1. This Opposition is submitted in response to the Motion seeking an order for Loss Mitigation be entered filed by Fran Frascati *aka* Fran B. Frascati *aka* Fran K. Frascati ("Debtor") on April 1, 2019.
2. Debtor is currently 50 payments delinquent and the loan is currently due for the February 15, 2015 payment.
3. Debtor has a current interest rate of 4.33% with a maturity date of August 1, 2035.
4. The Secured Creditor has attempted multiple times to work with the Debtor in regards to the default and has completed prior reviews.
5. Debtor entered loss mitigation and was removed from review on March 22, 2011 as the loan was denied for modification options.
6. Debtor entered loss mitigation and was removed from review on September 22, 2016 as Debtor did not provide a complete packet for review.
7. Debtor entered loss mitigation and was removed from review on June 12, 2018 as an affordable payment could not be reached. Income used for the review was \$2,907.52.

8. On December 18, 2017 the Debtor and the Debtor's spouse filed bankruptcy under case number 8-17-7777-las. An order for Loss mitigation was entered on February 22, 2018 in that case and was terminated on October 26, 2018. A copy of the Loss mitigation termination order is attached hereto as Exhibit A.
9. On September 27, 2018 a Detail Denial Letter was filed in case number 8-17-7777-las. In that letter the loan was denied due to negative NPV. The income used for the review was \$8,146.25. Additionally, four reviews had been completed in the span of seven months that all resulted in denials. A copy of the filed detailed denial letter is attached hereto as Exhibit B.
10. Additionally, Debtor's Motion indicates interest for review of non-retention options and the Secured Creditor does not object to reviewing the loan for these options.
11. Given the history of the loan, the prior Court Ordered Loss Mitigation review, the Secured Creditor requests an Order not be entered and the Request for Loss Mitigation be denied or in the alternative to have the Order entered for non-retention options only.

Dated: April 11, 2019

/s/ Aleksandra K. Fugate, Esq.
Aleksandra K. Fugate, Esq.
WOODS, OVIATT, GILMAN LLP
Attorneys for Secured Creditor
700 Crossroads Building, Two State Street
Rochester, New York 14614
bkinbox@woodsoviatt.com

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

IN RE:

CASE NO: 8-19-71525-las

**Fran Frascati
aka Fran B. Frascati
aka Fran K. Frascati**

**AFFIDAVIT OF
SERVICE BY MAIL**

DEBTOR.

I, Josh MacDonald, being duly sworn, deposes and says: Deponent is not a party to this action, is over 18 years of age, and resides in Rochester, New York. On April 11, 2019 deponent served an Objection to Loss Mitigation Request upon:

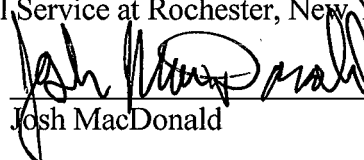
Andrew M Thaler
Thaler Law Firm PLLC
675 Old Country Road
Westbury, NY 11590

Fran Frascati
5 Seaton Street
Massapequa, NY 11758

Marianne DeRosa
Standing Chapter 13 Trustee
125 Jericho Tpke
Suite 105
Jericho, NY 11753

United States Trustee
Long Island Federal Courthouse
560 Federal Plaza - Room 560
Central Islip, NY 11722-4437

By deposit a true copy, in a postpaid properly addressed envelope, in a post office box under the exclusive care and custody of the United States Postal Service at Rochester, New York


Josh MacDonald

Sworn to before me this
11th day of April, 2019



Notary Public

ANDREW WILLIAM DAVIS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 011748200516
Qualified in Monroe County
Commission Expires December 24, 2023

Exhibit A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----x
In re:

Chapter 7

James Frascati, Jr. aka Jim Frascati, Jr.
Fran Frascati aka Fran B. Frascati
Aka Fran K. Frascati,

Case No. 8-17-77777-las

Debtor.
-----x

ORDER TERMINATING LOSS MITIGATION AND FINAL REPORT

Name of Lender: Wells Fargo Bank, N.A.

Property Address: 5 Seaton Street, Massapequa NY 11758

Last Four Digits of Account Number of Loan: 4394

File Date of Request for Loss Mitigation: 2/6/2018

Date of Entry of Order Granting Loss Mitigation: 2/22/2018

Date of Entry of Order Approving Settlement (if any):

Other Requests for Loss Mitigation in this Case: No

The use of the Court's Loss Mitigation Procedures has resulted in the following:

- ☐ Loan modification
- ☐ Loan refinance
- ☐ Forbearance
- ☐ Short sale
- ☐ Surrender of property
- ☒ No agreement has been reached
- ☐ Other:

It is hereby

ORDERED, that Loss Mitigation is terminated with respect to the Loan identified
above by the last four digits of the account number.

Dated: October 26, 2018
Central Islip, New York



Louis A. Scarcella

Louis A. Scarcella
United States Bankruptcy Judge

700 Crossroads Building
2 State Street, Rochester, New York 14614
P 585.987.2800 F 585.454.3968



1900 Main Place Tower
Buffalo, New York 14202
P 716.248.3200 F 716.854.5100

woodsoviatt.com

Default Service Direct Dial: 855-227-5072
Email: afugate@woodsoviatt.com

September 27, 2018

Honorable Louis A Scarcella
United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato Federal Courthouse
290 Federal Plaza
Central Islip, NY 11722

**Re: JAMES FRASCATI, JR.
AKA JIM FRASCATI, JR.
FRAN FRASCATI
AKA FRAN B. FRASCATI
AKA FRAN K. FRASCATI**

Case No.: 8-17-77777-las

Property Address: 5 Seaton Street, Massapequa, NY 11758

Dear Hon. Louis A Scarcella:

Please allow this letter to serve as a written status report, submitted on behalf of Wells Fargo Bank, N.A., (the Secured Creditor) in preparation of the upcoming Loss Mitigation Hearing.

The Secured Creditor has denied the account for Loss Mitigation Options. Please allow this letter to serve as detailed denial report submitted in relation to the loan modification denial issued by the Servicer.

We submit this letter in advance of the hearing scheduled for October 4, 2018 and in explanation of the modification decision made by the Secured Creditor to deny the loan for all modification options. On August 6, 2018 Opposing Counsel submitted an appeal with documents showing additional income. On August 15, 2018, the Secured Creditor denied the appeal.

After a comprehensive re-review of the loan with the new documents showing additional income, it was determined that the loan is denied for modification options due to negative Net Present Value ("NPV").

Gross Monthly Income: \$8,146.25

Community United Methodist Church: \$730.02 (monthly YTD income)

T&P Paper: \$2551.25 (based on two provided checks in the amounts of \$1215 and \$1140; Calculation: $\$1215 + \$1140 / 2 = \$1177.50$ average x 26 weeks / 12 months = \$2551.25)

JaJa Enterprises: \$2,864.98 (based on P&L)

Contribution Income from Allison Frascati: \$2,000 (increased from \$1200 to \$1700 to \$2000)

Current Mortgage Terms

Date of Default: 01/15/2015

Remaining Term: 204

Interest Rate: 4.000%

Unpaid Principal: \$410,958.47

Total Payment: \$3,926.38

Housing debt-to-income: 48.200%

Total arrearage: \$125,190.22

Property Value: \$410,000.00

After Attempting to Modify

Remaining Term: 344

Interest Rate: 4.000%

Unpaid Principal: \$410,958.47

Total Payment: \$3,092.58

Housing debt-to-income: 37.964%

Deferment: \$56,987.49

Waived: \$65,361.26

NPV: (\$5,697.94)

When the Secured Creditor reviewed the Debtors' most recent appeal for a loan modification, the Debtors' gross monthly income was \$8,146.25; the property was valued at \$410,000.00; the Debtors' existing monthly mortgage payment comprised of principal, interest, taxes and insurance ("PITI") is \$3,926.38 and there is a total of \$125,190.22 in past due payments owed on the mortgage loan. The first step in the modification waterfall is to waive delinquent interest and late charges, which totaled \$65,361.26. Delinquent escrow and recoverable advances totaling \$56,987.49 would be deferred.

The NPV test is an industry standard that was set up under the Treasury HAMP guidelines. A key factor in the calculation is the probability of re-default. In addition to the determination of affordability, the Secured Creditor also considers other multiple factors, including but not limited to, the value of the property as compared against the outstanding loan balance, credit score, and the cost of carrying the mortgage loan in default for over 3.5 years.

The Secured Creditor has performed four reviews for loan modification on this loan in the past seven months, all resulting in denials. As such, we will be seeking to terminate Loss Mitigation at the hearing. If you have any questions please let me know at the above phone number or email.

Very truly yours,
WOODS OVIATT GILMAN LLP
/s/ Aleksandra K. Fugate
Aleksandra K. Fugate, Esq.

cc:

Spiroa Avramidis
James Frascati, Jr.
Fran Frascati

Kenneth Kirschenbaum
United States Trustee

The law firm of Woods Oviatt Gilman LLP and the attorneys whom it employs are debt collectors who are attempting to collect a debt. Any information obtained by them will be used for that purpose.